

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-901

February 18, 2004

Appeal of Consumer Assistance Division
Decision #2002-13680 Regarding
AT&T Communications

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order we uphold the factual findings contained in the November 24, 2003 decision of the Consumer Assistance Division (CAD) and further find that AT&T did not violate Maine statutes or rules in billing its customer Randall Cushman.

II. BACKGROUND

This dispute concerns Mr. Cushman's residential intrastate and interstate long distance services. The following chart reflects the various carriers providing service to Mr. Cushman from 1999 to 2003:

	Interstate	Intrastate
1999	AT&T	AT&T
12/10/02	Qwest	AT&T
5/5/03	Qwest	Qwest
9/2/03	Verizon	Verizon

Mr. Cushman changed his interstate service from AT&T to Qwest in December 2002. The AT&T calling plan required that he take both interstate and intrastate service from AT&T to receive a favorable rate of 7¢ per minute. When he changed his interstate service, his AT&T intrastate service automatically reverted to the standard per minute charge. AT&T's records show that the change was made after Mr. Cushman communicated with Qwest. Qwest then contacted AT&T (through a computerized system) but since Mr. Cushman did not contact AT&T directly about the change, there was no opportunity for AT&T to remind him about the impact on his interstate rates. The requirement that he would need to take both in-state and intrastate service from AT&T in order to receive the 7¢ rate was in the material he received when he originally signed up for the service.

On February 4, 2003, Mr. Cushman called AT&T to cancel his intrastate service. AT&T informed him that he would need to call his local carrier Verizon and ask them to initiate the change. In May 2003, AT&T received a notice from Verizon changing Mr. Cushman from AT&T to Verizon for intrastate calls.

Mr. Cushman complained to CAD on March 26, 2003. During CAD's investigation of the complaint, AT&T maintained there had been no errors, but it was willing to give Mr. Cushman a 25% discount on the calls that were billed at the standard rate. This resulted in a credit of \$152.71 and an outstanding balance of \$501.14.

In its decision of November 24, 2003, CAD recounted this background and did not find that AT&T had acted improperly. On December 10, 2003, Mr. Cushman appealed the decision to the Commission. Mr. Cushman alleges that AT&T has violated Chapter 292 § 9(A) which requires an interexchange carrier, such as AT&T, to provide a customer with written notice at least 25 days before a price increase or change in terms and conditions. He also complained that AT&T had turned his account over to a collection agency while his complaint was pending at CAD. He asks the Commission to order AT&T to dismiss the charges owing on his residential account, sanction AT&T for bad business practices and award "sanctions" to him for the time he has spent dealing with this problem.

III. DISCUSSION

We agree with CAD's findings and further find that AT&T violated no Commission rules in handling Mr. Cushman's residential account for intrastate long distance service. Chapter 296 of the Commission's Rules governs the relationship between carriers when a customer chooses a new carrier. The AT&T plan Mr. Cushman was using requires customers to obtain both their interstate long distance and intrastate long distance from AT&T. AT&T provided this information to Mr. Cushman when he signed up for the service. When Mr. Cushman decided to change his interstate long distance service to Qwest, Qwest electronically notified AT&T about the switch.

Chapter 296 requires this process (with a detailed protocol) to avoid carriers switching customers without their permission (i.e., "slammed"). Mr. Cushman never spoke to an AT&T representative so AT&T did not have an opportunity to advise him that dropping AT&T as his interstate carrier made him ineligible for the AT&T One Rate Weekend Plan. As an AT&T intrastate long distance customer not on any particular plan, he reverted to AT&T's standard rate of 40¢ per minute.

In February 2003 when he called AT&T and asked to drop its service due to the high charges for intrastate long distance, AT&T correctly informed him he would have to contact his local carrier, Verizon, to institute the change. Once again, this is required as a consumer protection.¹ Records show that Mr. Cushman did not contact Verizon until May at which time his intrastate service with AT&T terminated. We recognize that these requirements may be confusing to some consumers. Increased competition has lowered prices, but it has also put a greater burden on consumers to recognize the terms under which they are obtaining service.

¹ A request to change to "no carrier selected" must go to the local service provider as this choice is programmed in its switch.

Mr. Cushman argues that AT&T should have notified him about the rate increase pursuant to Chapter 292 § 9 of the Commission's rules. This section describes the notices that an interexchange carrier must provide for a price increase or change in terms and conditions. This same provision appears in 35-A M.R.S.A. § 7307. These provisions are inapplicable to Mr. Cushman's situation. No rate has increased. AT&T moved him to a different rate after he failed to maintain both his in-state and out-of-state service with AT&T. AT&T has not changed the terms and conditions associated with the rate he was charged. Instead, the terms and conditions allowed the transfer. Therefore AT&T has not violated either 35-A M.R.S.A. § 7307 or Chapter 296 § 9.

Mr. Cushman also alleges that it was bad faith for AT&T to turn over the unpaid balances to a collection agency² while his CAD case was pending and that Verizon ignored CAD's request not to do so. Commission rules do not prohibit a utility from seeking collection during the pendency of a CAD case. Under Chapter 292, a utility cannot disconnect a customer while a case is pending, but in this case Mr. Cushman had already chosen to stop receiving service from AT&T. Sometimes a CAD specialist will ask a utility to forego collection but this is not required by statute or rule.

Based on the above discussion, we uphold the decision of CAD and find that AT&T did not violate Maine statutes or rules in its dealings with Mr. Cushman.

Dated at Augusta, Maine, this 18th day of February, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

² Mr. Cushman's complaint that the collection agency was not licensed to do business in Maine should be directed to the Maine Department of Professional and Financial Regulation, Office of Consumer Credit, 1-800-332-8529.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.